

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

| | | |
|-------------------------------------|---|--------------------------------|
| STATE OF NEW MEXICO, <i>ex rel.</i> |) | |
| State Engineer |) | 69cv07941-MV/KK |
| |) | RIO CHAMA STREAM SYSTEM |
| Plaintiff, |) | |
| |) | Section 3, Rio Cebolla |
| vs. |) | |
| |) | Subfile Nos. CHCB-001-0007, |
| ROMAN ARAGON, <i>et al.</i> , |) | CHCB-002-0001B, CHCB-002-0002, |
| |) | CHCB-002-0009 |
| Defendants. |) | |
| _____ |) | |

SUPPLEMENT TO INITIAL DISCLOSURES

**CHARLIE AND GERALDA M. CHACON
DELFIN O. AND FRANCES S. CHACON TRUST**

Pursuant to the December 16, 2014 Revised PreTrial Order (No. 11064) and F.R.Civ.P.

26(a) the Defendants hereby supplement and correct their initial disclosures, as shown below in italics:

1. The name, address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses.

The following additional individual may have or might develop discoverable information that the Defendants may use to support their claims or defenses:

- a) Charlie Chacon, 1007A South Prince Drive, Espanola, NM 87532, (505) 753-4795.
- b) Geralda M. Chacon, 1007A South Prince Drive, Espanola, NM 87532, (505) 753-4795.
- c) Mary C. Martinez, 200 Romans Lane, Bloomfield, N.M. 87413, (505) 632-2838.



- d) Gerald Chacon, 1007C South Prince Drive, Espanola, NM 87532 (505) 753-6231.
- e) Edmund Sanchez, P.O. Box 223, Cebolla, NM 87518, (575) 684-2245.
- f) Carlos Chacon, P.O. Box 931, Espanola, NM 87532, (505) 927-9968.
- g) *Delfin Quintana, P.O. Box 156, Cebolla, NM 87518. (575) 684-2435.*

[Delete as Witness / died on April 14, 2015]

- h) Tony Valdez, Taos County Ag Extension Agent, Los Luceros, NM
Arriba County, NMSU, Abiquiu, NM 87510, (505) 685-4523.
- i) Charlie Hibner, retired soil scientist NRCS 505 470-5775; Cebolla, NM 87518
- j) Sam Smallege, PhD. NMSU Extension Range Specialist, P.O. Box 30001 MSC,
3AE, Las Cruces, N.M. 88003, (505) 646-5944
- k) Stephen D. Hardin, Surveyor, 1963 Ottowi Road, Santa Fe, NM 87505, (505)
989-4251
- l) Patrick Torres, Santa Fe County Ag Extension Agent, NMSU, 3229 Rodeo Road,
Santa Fe, NM 87505, (505) 471-4711
- m) Malcom Ebright, Guadalupita, New Mexico 87722
- n) *Ernesto Sanchez, Cebolla, NM 87518 and 1440 Calle Cielito Lindo, Espanola,
NM 87532 (505) 753-405, will testify regarding history of Sanchez ditch and use
of same by Chacon defendant to irrigate El Alto and the Tia Josefa pasture.*
- o) *Bill Moore, Moore Cash Lumber LLC, Hernandez, NM 87537, (505) 753-5717,
will testify that he built a road to haul out logs in the location that the State is now
claiming was the desagüe or end of the Old Valdez Ditch.*

2. A copy of, or a description by category and location, or all documents, data compilations and tangible things that are in the possession, custody or control of the party and that the disclosing party may use to support its claims or defenses.

The Defendants may use the following documents, data compilations and tangible things to support its claims or defenses. The Defendants reserve their right to assert in response to any discovery request any claims of privilege or immunity that are applicable to all or part of any of the identified materials. Unless otherwise noted, the identified materials have been produced to the State Engineer or are otherwise located in the Defendants' Attorney, Law Offices of Ted J. Trujillo, #0C1 SF County Road 129, Chimayo, New Mexico 87522 (505) 351-1632.

A. Survey Exhibits

1. Turley Survey Map: "Map of the El Rito de Tanque – Rito de La Piedra Ditch System – Commission of the Acequia Pinavetal et al – Claimants", "Declaration No. 0636 Received June 10, 1949 Office of the State Engineer and Application No. 2686, Filed 2738 September 21, 1949 Office of the State Engineer" and "Declaration No. 0636 Amended, 0636 B, & 0636 C Received June 10, 1949 Office of the State Engineer and Application No. 2686 & 2738, Filed 2738 September 21, 1949 Office of the State Engineer" with handwritten notes, signed and dated June 10, 1949 by Walter G. Turley.

2. New Mexico Office of the State Engineer, Rio Chama Stream System Hydrographic Survey Report, Section 3 Rio Cebolla Section, August 11, 2000.

3. "Exhibit A Assembled and Prepared By Stephen D. Hardin, Land Surveyor, " Lands of Charlie and Jerald Chacon", showing Defendants' lands irrigated by the Pinabetal, the Sanchez Ditch and the Old Valdez Ditch, prepared July 14, 2008.

4. *Surveyor General Henry M. Atkinson, December 6, 1883 survey "Map of Township No. 27, North range No. 4 East of Principal Meridian New Mexico" showing cultivated land in Tia Josefa pasture. [Delivered to M. Braswell at Deposition on June 2, 2015]*

5. *Surveyor General Lucius Dills, August 16, 1909 survey "Map of Fractional Township No. 27, North range No. 4 East of Principal Meridian New Mexico" showing areas of Small Holding Claims. [Delivered to M. Braswell on June 12, 2015]*

6. *Scott A. Verhines, Office of the State Engineer " Map Showing Selected Homesteads, Purchases and Ditches in Rio Cebolla Area." [Delivered to M. Braswell on June 12, 2015]*

B. Other Reports

1. "Cebolla Vegetation Comparison" prepared by Range Improvement Task Force, New Mexico State University December 1, 2009, Based on Rapid Assessment Methodology and Species Composition Analysis, Conducted by Range Improvement Task Force, New Mexico Cooperative Extension Service, November 11, 2009.

C. Aerial Photography

1. *OSE two aerial photographs showing "seeped" area of Tia Josefa pasture in Subfile CHCB 011-0007, dated August 11, 2000 and June 10, 2008*
2. *One aerial photograph showing "seeped" area of Tia Josefa pasture, the "Alto" and Old Valdez Ditch, with superimposed red lines for Sections 14, 13, 18, 19, 23, 24, 26, 25, 30 and RA County Road 310*

D. Photographs

1. Chacon Family LLC about 200 photographs of claimed irrigated acreage, taken on July 31, 2009.
2. Two Old Black and White Photo of Maximiana Lopez Chacon, Simon Lopez and Aquilino Valdez, with hay production.
3. One Old Black and White Photo of Patricio Chacon with Gormans on hay field.
4. Three color photos of old plumbing at Saw Mill.
5. Three color photos, A, B and C, from 2000s, Rito de La Piedra to Saw Mill tank.
6. Video of Old Valdez Ditch running down to Alfalfita field.

E. Water Rights Files

1. OSE Water Rights Files No. 2738, 0646 and 0492.

F. Depositions / Other Documents

1. *a) Deposition of Charlie Chacon, 69cv07941-BB, December 17, 2009, including attached Exhibits.*
b) Deposition of Charlie Chacon, 69cv07941-MV, June 2, 2015, including attached Exhibits.
c) Deposition of Ernesto Sanchez, 69cv07941-MV, June 2, 2015, including attached Exhibits.
2. Deposition of Mary Chacon Martinez, 69cv07941-BB, January 17, 2011, *including*

attached Exhibits.

3. a) Affidavits: Patricio Chacon, dated March 15, 1973; Pedro Trujillo y Chacon, dated October 1, 1966; Charlie Chacon, dated March 28, 2001; Gabriel L. Valdez, Jr., dated October 6, 2004; Ubaldo Valdez, dated October 13, 2003; Gilbert A. Chacon, dated August 14, 2003; Mary C. Martinez, dated August 13, 2004; Delfin Quintana, dated December 31, 2004.

b) Affidavits: *Feliberto Ulibarri, dated August 18, 2003; Cristobal Archuleta, dated August 18, 2003; Felipe Rivera, dated April 8, 2003; Leo Tafoya, dated December 12, 2004, Charlie Chacon, dated April 7, 2007 [6 pages]*
4. Letter from H.J. Guthmann, Attorney at Law, to Patricio Chacon, April 3, 1951.
5. Letter from H.J. Guthmann, Attorney at Law, to Patricio Chacon, dated July 19, 1951.
6. Spanish handwritten letter from Medardo Sanchez to H.J. Guthmann, July 2, 1957.
7. Statement of Old Water Rights filed June 27, 1932 by Cebolla property owners.
8. Settlement and Irrigation on the Rio Cebolla (Section 3, Rio Chama Hydrographic Survey), dated August, 1999, Report by John O. Baxter, Ph.D.
9. Settlement North of Abiquiu Leading to Settlement and Irrigation at Cebolla by Malcolm Ebright, dated June 8, 2006, including Maps by Stephen D. Hardin.
10. Homestead Records for Juan Desiderio Valdez and Jose Leandro Montoya.
11. 1860 Agricultural Census and 1880 Census. *[Pending, Rebuttal Exhibit Likely]*
12. *1895 Blas Valdez Homestead Documents, Patent for Lots 2, 3, 154 acres and 30 acres [34 pages]*
13. *1898 Jose Aguilar Homestead Documents, Patent for Lot 4 154.48 acres [20 pages]*
14. *Diskette of Ubaldo Valdez on signed statement Re: "Alfalfita" irrigation*
15. *1922 Pedro Y. Martinez Homestead Documents, Patent for 40 acres [37 pages]*
16. *1949 Application for Permit of Jose I. Maes for 10 acres irrigation on Pinabetal, together with correspondence through 1975 [10 pages]*
17. *Declaration of Ownership of Water Rights Perfected Prior to March 19, 1907 for Acequia Pinabetal by Medardo Sanchez, June 10, 1949 with other correspondence [5 pages]*

18. *License to Appropriate Water, No. 2738, from Acequia Pinabetal, November 20, 1953, [6 pages]*
19. *U.S. Department of the Interior BLM Report on Patricio Chacon application for isolated tract, April 22, 1946 [2 pages]*
20. *Proof of Completion of Works, Permit No. 2738, Jose Sanchez and Patricio Chacon, October 10, 1953 [2 pages] and Certificate of Construction for Acequia Pinabetal, Valdez and Sanchez Ditch, November 20, 1953 [4 pages]*

3. The identity of any witness that may be used at trial to present evidence under Federal Rules of Evidence 702, 703 or 705.

The Defendants may call the following witnesses to present expert testimony.

- A. Stephen D. Hardin, retired BLM Cadastral Surveyor will testify about the features shown on his demonstrative survey of the Defendants' properties and the subfiles. A copy of the survey is attached as Exhibit A.
- B. Sam Smallege, PhD. NMSU Extension Range Specialist. Dr. Smallege will testify about the Range Improvement Task Force site visit to the Chacon's subject properties. A copy of the report is attached as Exhibit B.
- C. Charlie Hibner, retired NRCS soil scientist, 505 470-5775; Cebolla, NM 87518 will testify about the nature of the Tia Josefa permanent pasture, identified as a "seeped" area by the OSE.
- D. Malcolm Ebright, Attorney at Law. Mr. Ebright will testify about the history of Settlement of the Cebolla, its origins and development, including agricultural activity and irrigation.

4. Summary of the facts and opinions to which the witness is expected to testify.

- A. Stephen D. Hardin, Surveyor, will testify about the features of various areas of the Defendants' subfiles as well as neighboring tracts owned by other irrigators, based upon his review of the documentation as annotated on the exhibit. He is also called upon to evaluate the aerial photographs when they are available and to form opinions as to the evidence of irrigation on the subject subfiles.
- B. Sam Smallege, PhD. Dr. Smallege was as a member of the Range Improvement Task Force that evaluated the "Tia Josefa" pasture land and the "Alfalfita" field for evidence of cultivation and irrigation and he will testify about the findings that support his opinions.

- C. Charlie Hibner, retired NRCS soil scientist, will testify about the classification of the Tia Josefa pasture and its relation to seasonal irrigation and intervening drought, based on his field experience and familiarity with similar pastures in the area.
- D. Malcolm Ebright, Attorney, will testify about the early settlement of the Cebolla area, including the families of the Defendants, as well as neighboring tracts owned by other settlers, and review the documentation used in his report, "Settlement North of Abiquiu leading to Settlement and Irrigation at Cebolla" and discuss the documentary evidence for the dates of settlement and development.

LAW OFFICES OF TED J. TRUJILLO

/s/ Ted J. Trujillo

By: _____

Ted J. Trujillo
Adan E. Trujillo
Attorneys for Defendants
P.O. Box 2185
Espanola, NM 87532-2185
Telephone: (505) 351-1632
Fax: (505) 351-4287
E-mail: tedjtrujillo@yahoo.com
adantrujillo@gmail.com